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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

IN RE:

Melanie A Smith

Debtor.

Case No. 24-10218-CMA

WAW Internal Appeal No. 25-S006

Chapter 7

**CORRECTED AND AMENDED
NOTICE OF APPEAL**

CORRECTED AND AMENDED NOTICE
OF APPEAL

DEVLIN LAW FIRM LLC
1526 GILPIN AVENUE
WILMINGTON, DE 19806
Tel: (302) 449-9010

1 This notice corrects and amends the notice of appeal filed on 5/13/2025 in Melanie A.
2 Smith's bankruptcy case, No. 24-10218-CMA, in the United States Bankruptcy Court for the
3 Western District of Washington at Seattle to add necessary party Appellees to this appeal.

4 **Part 1: Identify The Appellant(S)**

5 1. Name(s) of appellant(s):

6 Melanie A. Smith

7
8 2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of
this appeal:

9 For appeals in an adversary proceeding.

10 ☒ Plaintiff

11 ☐ Defendant

12 ☐ Other (describe) _____

For appeals in a bankruptcy case and not in an
adversary proceeding.

13 ☒ Debtor

14 ☐ Creditor

15 ☐ Trustee

16 ☐ Other (describe) _____

17 **Part 2: Identify the subject of this appeal**

18 1. Describe the judgment—or the appealable order or decree—from which the appeal is taken:

19 2.

20 Dkt No. 153 – Order Authorizing Sale of Real Property of the Estate Free
21 and Clear of Liens and Encumbrances (4/18/2025)

22 Dkt No. 163 – Order on Motion for Reconsideration (5/01/25)

23 3. State the date on which the judgment—or the appealable order or decree—was entered:

24 4/18/2025 and 5/01/2025

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment—or the appealable order or decree—from which the appeal is taken and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

- | | | | | |
|----|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <u>Party:</u> | Michael P. Klein,
Bankruptcy Trustee | <u>Attorney</u> | Rory C. Livesey
2033 6 th Ave. Ste 900
Seattle, WA 98121-2594
<i>Rory@livelaw.com</i> |
| 2. | <u>Party</u>
: | U.S. Bank Trust
National Association,
not in its individual
capacity but solely as
owner trustee for
RCF 2 Acquisition
Trust (“U.S. Bank”) | <u>Attorney</u> | Lance E. Olsen
McCarthy & Holthus, LLP
108 1st Ave S
Seattle, WA 98104
<i>lolsen@McCarthyHolthus.com</i>
<i>lolsen@McCarthyHolthus.com</i> |
| 3. | <u>Party</u>
: | Deutsche Bank
National Trust
Company, as
indenture trustee, on
behalf of the holders
of the Terwin
Mortgage Trust
2006-8, asset-backed
securities, Series
2006-8 (“Deutsche
Bank”) | <u>Attorney</u> | David Petteys
Aldridge Pite, LLP
3333 Camino del Rio South
Suite 225
San Diego, CA 92108
<i>dpetteys@aldridgepite.com</i> |
| 4. | <u>Party</u> | Stephen M.
Fry | <u>Attorney</u> | Cambria Queen
Dickson Frohlich
Phillips Burgess, PLLC
909 A Street
Suite 900
Tacoma, WA 98402
<i>cqueen@dicksonlegal.c</i>
<i>om</i> |

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Christopher M. Alston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

Honorable Christopher M. Alston
Hearing date: April 10, 2025; 9:30 a.m.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:)	Chapter 7
)	Bankruptcy No. 24-10218-CMA
MELANIE A. SMITH,)	
a/k/a/ M. A. Smith, a/k/a M. Smith,)	ORDER AUTHORIZING SALE OF REAL
)	PROPERTY OF THE ESTATE FREE
)	AND CLEAR OF LIENS AND
Debtor.)	ENCUMBRANCES

THIS MATTER having come on pursuant to an order shortening time, before the above-signed Judge of the above-entitled Court, upon the Trustee's Motion for an Order Authorizing Sale of Real Property of the Estate Free and Clear of Liens and Encumbrances, it appearing that all interested parties have received notice, the Court having made oral findings of fact and conclusions of law on the record which are incorporated herein by this reference pursuant to Fed. R. Civ. P. 52(c), made applicable to these proceedings pursuant to Fed. R. Bank. P. 7052, now, therefore, it is hereby

ORDERED that the trustee, Michael P. Klein, is authorized to sell real property of the estate according to the terms of the purchase and sale agreement attached to Docket No 127, and generally set forth below:

**ORDER AUTHORIZING SALE OF REAL
PROPERTY OF THE ESTATE FREE AND
CLEAR OF LIENS AND ENCUMBRANCES**
250409aOrd - Page 1

THE LIVESEY LAW FIRM
2033 Sixth Avenue, Suite 900
Seattle, WA 98121
(206) 441-0826

1	Street address of	
2	property to be sold:	3057 - 42 nd Avenue West, Seattle, WA 98199
3	Legal description of	
4	property to be sold:	Lots 1-2, Blk 4, Hiawatha Park Second Add. to the City of Seattle, Vol. 5, P. 21, King County, WA
5	Parcel No.:	327180021500
6	Sale price:	\$1,280,000.00
7	Terms of sale:	Cash at Closing
8	Purchaser:	Stephen M. Fry, and/or assigns
9	Purchaser's address:	688 - 110 th Avenue N.E., S1410 Bellevue, WA 98004
10		
11	Costs of sale:	The estate will pay the real estate agent a commission of 6% of the gross sales price or such lesser amount as the agents shall agree to; and, the estate will pay those costs of sale customarily paid by the Seller in Western Washington. These costs would include, but are not limited to, title insurance, real estate taxes due through the date of sale and one-half of the escrow costs.
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17	Utility Liens	In many cases the existence of a utility lien and/or the amount of the lien is unknown until closing or thereafter. These liens usually, but not always, are equal to the utilities bills incurred over several months. The trustee will pay these liens from the sale proceeds.
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20	Encumbrances & approximate	
21	claim amounts:	(1) U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust ("U.S. Bank"), deed of trust - \$400,000; ¹ (2) Deutsche Bank National Trust Company, as indenture trustee, on behalf of the holders of the Terwin Mortgage Trust 2006-8, asset- backed securities, Series 2006-8 ("Deutsche Bank"), deed of trust - \$650,000; and
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¹Assignee of Wilmington Savings Fund Society, FSB.

(3) Federal National Mortgage Assn judgment - \$322,700.

IT IS HEREBY FURTHER ORDERED that said sale will be free and clear of all liens and interests, except real and personal property taxes, said liens and interests to attach to the proceeds of the sale as though those proceeds were the property, said liens and interests to be satisfied from those proceeds. The trustee specifically reserves the right to contest each encumbrance or alleged encumbrance against the subject property. Notwithstanding the foregoing, the trustee shall pay U.S. Bank Trust National Association, not in its individual capacity, but solely as owner trustee for RCF 2 Acquisition Trust in full from the sale proceeds at closing.

IT IS HEREBY FURTHER ORDERED that the trustee shall pay Deutsche Bank National Trust Company, as indenture trustee, on behalf of the holders of the Terwin Mortgage Trust 2006-8, asset-backed securities, Series 2006-8 ("Deutsche Bank"), \$475,970.41 from the sale proceeds at closing. Notwithstanding the foregoing, Deutsche Bank's receipt of said proceeds shall not constitute a concession on its part that all or any portion of its secured claim is subject to avoidance or is otherwise invalid or unenforceable for any reason, and Deutsche Bank expressly reserves the right to oppose any existing or future objection to its secured claim by the trustee or debtor.

IT IS HEREBY FURTHER ORDERED that the balance of the sale proceeds, including the debtor's homestead, will be disbursed upon further order of the Court.

IT IS HEREBY FURTHER ORDERED that the automatic stay under Federal Rule of Bankruptcy Procedure 6004(h) shall not apply to the transaction(s) approved in this order.

IT IS HEREBY FURTHER ORDERED that, as the purchaser is a good faith purchaser for value, the provisions of 11 U.S.C. § 363(m) are applicable to this sale.

IT IS HEREBY FURTHER ORDERED that the balance of the relief requested in the trustee's motion is denied as moot.

**ORDER AUTHORIZING SALE OF REAL
PROPERTY OF THE ESTATE FREE AND
CLEAR OF LIENS AND ENCUMBRANCES**
250409aOrd - Page 3

THE LIVESEY LAW FIRM
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//// END OF ORDER ///

Presented By:

THE LIVESEY LAW FIRM

/S/ Rory C. Livesey

Rory C. Livesey, WSBA #17601
Attorney for Michael P. Klein, Trustee

The Livesey Law Firm
2033 Sixth Avenue, Suite 900
Seattle, WA 98121
(206) 441-0826

Approved as to Form; Notice of
Presentation Waived by:

MCCARTHY & HOLTHUS, LLP

/S/ Lance E. Olsen

Lance E. Olsen, Esq., WSBA #25130
Attorneys for Creditor U.S. Bank Trust

McCarthy & Holthus, LLP
108 - 1st Avenue South, Suite 400
Seattle, WA 98104
(206) 596-4843

ALDRIDGE PITE, LLP

/S/ David Petteys

David Petteys, WSBA #33157
Attorneys for Deutsche Bank National Trust Company

Aldridge Pite, LLP
The Ogden Building
9311 SE 36th St., Ste. 207
Mercer Island, WA 98040
(206) 707-9610

**ORDER AUTHORIZING SALE OF REAL
PROPERTY OF THE ESTATE FREE AND
CLEAR OF LIENS AND ENCUMBRANCES**
250409aOrd - Page 4

THE LIVESEY LAW FIRM
2033 Sixth Avenue, Suite 900
Seattle, WA 98121
(206) 441-0826



A handwritten signature in black ink, appearing to read "CM Alston".

Christopher M. Alston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

Christopher M. Alston
Bankruptcy Judge
United States Courthouse
700 Stewart Street, Suite 6301
Seattle, WA 98101
206-370-5330

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

Melanie A. Smith,

Debtor.

Chapter 7

Case No. 24-10218

ORDER ON MOTION FOR
RECONSIDERATION

This matter came before the Court on the Debtor's Motion for Reconsideration (the "Motion") [ECF No. 158]. The Motion requests reconsideration of the Court's Order Authorizing Sale of Real Property of the Estate Free and Clear of Liens and Encumbrances [ECF No. 153] (the "Order"). In the Motion the Debtor asserts that the Court erred by failing to consider a higher and better offer to purchase the real property at issue that the Debtor presented at the hearing.

Motions for reconsideration are disfavored and are usually to be denied without a showing of either manifest error or of new facts or law that could not have previously been brought before the Court with reasonable diligence. Local Civil Rule 7(h), applicable through

1 Local Bankruptcy Rule 9013-1(h). Motions for reconsideration “shall not be noted for hearing
2 unless oral argument is requested by the court.” Local Bankruptcy Rule 9013-1(h).

3 The Debtor has shown no new facts or law that could not have previously been brought
4 before this Court nor any manifest error made by the Court. The Chapter 7 Trustee asked the
5 Court to approve the sale noted for hearing. Courts in this circuit hold a chapter 7 trustee
6 proposing a sale is entitled to great deference in exercising his or her business judgment in that
7 context. *In re Baroni*, 643 B.R. 253, 291 (Bankr. C.D. Cal. 2022); *In re Alaska Fishing*
8 *Adventure, LLC*, 594 B.R. 883, 890 (Bankr. D. Alaska 2018). The Debtor complains that the
9 Court should have delayed the sale hearing and forced the Trustee to pursue a different offer with
10 a slightly higher purchase price—and, as her counsel acknowledged at the hearing, unsatisfied
11 contingencies. Given that counsel for the secured lender clearly stated at the hearing that the
12 non-judicial foreclosure set for the next day would be continued *only* if the Court approved a sale
13 that was nearly certain to close in a few weeks, the Court did not commit manifest error by
14 taking the proverbial “bird in the hand” rather than forcing the Trustee to chase “two in the
bush.” Now, therefore it is hereby

15 ORDERED that the Motion is DENIED.

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///END OF ORDER///